HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 860/2004(M/S)

Veer Singh Bisht Nainital

VS

District Judge and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 11th October 04.

Initial of Judge

IN THE HGIH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 860 OF 2004

Veer Singh Bisht, son of Govind Singh Bisht,
resident of Shop No. 248, Jay Lal Shah Bazar,
Mallital, Nainital. ……..Petitioner

Versus

1. District Judge, Nainital.
2. Prescribed Authority/Chief Judicial Magistrate, Nainital.
3. Kundal Lal Shah, son of Moti Lal Shah, resident of 248 Jay Lal Shah Bazar, Mallital, Nainital.
4. Chandra Mouli Shah, son of Kundal Lal Shah, resident of 248, Jay Lal Shah Bazar, Mallital, Nainital
5. Radha Kushum Shah, son of Kundal Lal Shah, resident of 248 Jay Lal Shah,
Mallital, Nainital ……Respondents.

Dated: October 11, 2004.

HON'BLE RAJESH TANDON, J.

Heard Sri K.N. Joshi learned counsel for the petitioner and learned Standing counsel for the respondents.

By the present Writ Petition, the petitioner has prayed for quashing of the orders passed by the courts below allowing the application under section 21(1)(a) of U.P. Act No. 13 of 1972 for the release of ground floor of the House No. 248 Jay Lal Shah Bazar, Mallital, Nainital.

Factual Aspect of the case:

Briefly stated the facts of the case are that the respondent nos. 3 to 5 are the owners and landlords of the building house no. 248 Santi Kuti Jay Lal Shah Bazar Mallital, Nainital. The petitioner is a tenant of the ground-floor of house no. 248 consisting of one hall at the rate of Rs. 800/- per month.

According to the case of the landlords Sri Kundal Lal Shah is a Principal retired in the year, 1987 and since then he is permanently residing with his family in the house in question

and has got three rooms. The rooms are not sufficient to meet the requirement of the family members.

Sri Chandra Mauli Shah is a practicing lawyer. The landlord has submitted that the premises in dispute is required for opening the chamber. Relevant paragraph nos. 5, 6 and 7 are quoted below:-

> " That one room in house No. 248 known as Sant Kuti mentioned above is being used as drawing room and another two rooms are being used as bed-rooms of the applicant nos. 1 and 2 and there is no availability of any room separately for the applicant no.3. The applicant no.3 is in service in Delhi; so whenever he visits Nainital, he is compelled to adjust in the drawing room. It is not out of place to mention here that the applicants nos. 2 and 3 are the sons of the applicant no.1.
>
> That the applicant no.2 is a practicing lawyer and practicing in the District Court, Naianital and also in the Hon'ble High Court of Uttaranchal at Naianital and the length of practice of the applicant no.2 is about 8 years and he is the regular practitioner of the District Courts, Naianital as well as the Hon'ble High Court of Uttaranchal."
>
> "That by lapse of time, the practice of applicant no. 2 is increasing and he requires a separate room for setting up his office/chamber and library and place for sitting of his clients, so that he could deal with his clients properly. But due to lack of accommodation the applicant no.2 is compelled to use his drawing room as a chamber which many a times puts the applicant no.2 and other family members in a very awkward position when guests of the family also visit at the same time when other clients of the applicant no.2 are also sitting in the drawing room. Specially, it is very problematic during summers when relatives and friends as also guests come to Nainital to stay in the house of the applicants when the applicant no.2 is faced with great difficulties in attending his

clients due to lack of accommodation and non-availability of proper chamber. As stated above, there is no proper place for keeping his library and files in a proper manner, which is adversely affecting the practice of applicant no.2."

Petitioner has submitted that the petitioners are affluent persons and they do not need the accommodation. The petition was contested by the petitioner. The landlord has filed a replication and in the replication it has been noted as under:-

"A- That sub clause 2 of the para 4 of the W.S. is wrong hence not admitted. The real facts are that in the second story (first floor) of the house no.2 48the dimensionof the front room towards Bazar is 10.6 feet and towards back it is 10.8 feet in width and 12.3 feet in length, and the dimension of box room is 5.8 feet in width length and 10.8 feet in width and along with the box room there is attached lat. And bath room measuring 6.8 feet x 3 feet and just adjacent to it towards east there are stairs to upper stories of the building. It is pertinent to mention here that the doors of bath room and way to stairs opens from the northern wall of the box room and one door is also exists in between the front room and the box room. Thus this is the position of the first floor.

B- That in sub clause 3 of para 4 of the W.S. is also imaginary ,h3ence not admitted and specifically denied. The real position of the third story (second floor) is that the front room of the third story is of the dimension of 10.8 feet in width toward front and 10.10 feet towards back and 12.10 feet in length and just behind it the box room is of 10.10 feet in width and 5.7 feet in length, attached with lat. And bath room and staircases in the first floor of the building H.No. 248.

C- That sub clause 4 of the para 4 of the W.S. of the O.P. is also imaginary, hence not admitted and specifically denied. The real position of the fourth story (third floor) is that the front room of the third floor is of the

dimension of 10.2 feet in width towards front and 10.8 feet towards back of this room and 13.8 feet in length towards west and 9.9 feet towards east as in the same room a very small room is meant for "YOGA" for the applicant no.1. The box room along with this room is also, attach3ed having dimension of 10.8 feet x 5.6 feet along with attached bath room and stair case, with the same position as of the first and second floor. That in regard to the loft of the building the O.P. is alleging it as a big room (HALL) . The real fact is that the dimension of the loft is 13 feet in length and 9.5 feet in width along with the pooja room just above the left and bath room of the lower stories. Thus it is wrongly mentioned in sub clause 5 of the para 4 of the W.S. that this room is of measurement of 10 feet x 17 feet having the balcony of the measurement of 10 feet x 8 feet. The real fact is that the balcony is of measurement of 7 feet x 9.5 feet. It is also wrongly mentioned in this clause of the W.S. that the top floor consisting of lat. And bath room. The real fact is that there is no lat. and bath room in the top floor. It is not out of place to mention here that sub clause 6 of para 4 of the W.S. is contradictory to sub clause 5 of para 4 of the W.S."

A Commissioner was also appointed to inspect the premises. The Commissioner has rported as under:-

" प्रथम तल से द्वितीय तल को जाने के लिए सिर्फ उत्तर से ही सीढियां बनी है।

द्वितीय तल में जाने वाली सीढियों को द्वितीय तल के संलग्न नक्शे में डी–2 से प्रदर्शित किया गया है। इन सीढियों के पश्चिम तरफ स्नानागार व शौचालय बने है जिसे द्वितीय तल के संलग्न नक्शे में सी–2 से दर्शाया गया है। डी–2 से प्रदर्शित सीढियों से दक्षिण दिशा में बी–2 से प्रदर्शित छोटे कमरे में प्रवेश होता है जो कि ए–2 कमरे से लम्बाई में आधे से कुछ कम है। इस बी–2 कमरे में एक ड्रेसिग टेबुल मय स्टूल रखी हुयी थी इसके अलावा वहां पर अन्य पहनने के पकडे, अटैचियां एवं एक बडी

आल्मारी गोदरेज की रखी थी। बी–2 कमरे से दक्षिण दिशा में ए–2 कमरे में प्रवेश होता है जो कमरा बेड रूम के रूप में प्रयोग में हो रहा था इस ए–2 कमरे में एक डबल बेड पडा था तथा एक टी0बी0 केश बनाथा जिसमें एक टी0बी0, टू–इन–वन, बी0सी0पी0 आदि सामग्री रखी हुई थी तथा एक कुर्सी भी थी।

द्वितीय तल से तृतीय तल को जाने के लिए उत्तर दिशा से द्वितीय तल के संलग्न नक्शे में प्रदर्शित डी–2 से जाया जाता है।

तृतीय तल में प्रवेश तृतीय तल के संलग्न नक्शे में ई–3 से प्रदर्शित सीढियों से किया जाता है। ई–3 के पश्चिम दिशा में स्नानागार व शौचालय बने है। जिसको तृतीय तल के संलग्न नक्शे में डी–3 से प्रदर्शित किया गया है।ई–3 से दक्षिण को एक छोटे कमरे में प्रवेश होता है जिसको तृतीय तल के संलग्न नक्शे में सी–3 से प्रदर्शित किया गया है। इस कमरे में घरेलू सामान अटैचियां, कपउे वएक छोटी सी आलमारी व अन्य सामान रखे हुये थे। सी–3 कमरे से दक्षिण दिशा मे स्थित बी–3 कमरे में प्रवेश किया जाता है जो कि बेड रूम के प्रयोग में लाया जा रहा थाइस बी–3 कमरे में एक बडा बेड रखाथा, एक छोटा टी0बी0 पश्चिम दक्षिण कोने पर बनी आल्मारी में रखा था इस कमरे में इसके अलावा दो फोल्डिग कुर्सिया पश्चिम दिशा में रखी थी तथा पश्चिम दिशा के उत्तरी कोने पर एक बांस से बनी आल्मारी रखी थी जिसमें होम्योपैथी, अध्यात्म एवं योगा आदि से सॅम्बन्धित किताबें रखी हुयी थी। बी–3 बेड रूम से दक्षिण दिशा को एक कवर्ड बालकनी के रू‍प में एक छोटा सा कमरा ए–3 जिसकी लम्बाई मात्र 3.50 फीट है जिसमें एक बडा रजाई गददे रखे हुये थे। इस बक्से के उपर कुछ कपउे व अन्य सामान रखे थे इसके अलावा इस कमरे में एक फोल्डिग टेबुल रखा था।

तृतीय तल से उत्तर दिशा में स्थित ई–3 से प्रदर्शित सीढियों से चतुर्थ तल जो कि लौफट है में जाया जाता है। इस लौफट में प्रवेश चतुर्थ तल /लौफट के संलग्न नक्शे में प्रदर्शित डी–4 सीढियों से प्रवेश किया जाता है। डी–4 के पश्चिम में पूजा का कमरा सी–4 स्थित है। जिसमें मंदिर बना है और जहां पर बहुत सारे भगवानों की मूर्तियां रखी है फोटो लगे हैं, तथा पूजन सामग्री रखी हुयी थी। इस लौफट में कोई स्नानागार व शौचालय

नहीं बना है। डी–4 से प्रदर्शित सीढियों से दक्षिण दिशा में स्थित किचन जो कि लौफट/चतुर्थ तल है में प्रवेश किया जाता है जिसको संलग्न नक्शे में बी–4 से प्रदर्शित किया गया है। इस किचन में एक गैस सिलेन्डर, गैस का चूल्हा, बर्तन खाना बनाने से सम्बन्धित सामग्रियॉ रखी थी तथा गैस चूल्हा टेबुल पर रखा था। इस रसोई घर में एक टी0बी0 भी रखा था। बी–4 रसोईघर (किचन) से दक्षिण दिशामें एक खुली बालकनी बनी है जिसे संलग्न नक्शे में ए–4 से प्रदर्शित किया गया है।

महोदय मैंने निरीक्षण के दौरान जो वास्तविक स्थिति प्राथीगण के भवन की थी उसे उपर वर्णित कर दिया है तथाकमरों आदि की नाप संलग्न नक्शे में जो कि प्रत्येक तल के अलग अलग बनाये हैं, में दे दी है। नाम में एक दो इंच का फर्क आ सकता है परन्तु इससे ज्यादा का नहीं।"

Kundan Lal Shah has also filed his affidavit . Paragraph nos. 7 and 8 of the affidavit are quoted below:-

"That the ground floor of the building is under the tenancy of the O.P. and in the remaining first floor, second floor, third floor and loft are under the possession of the applicant and these remaining portion under the possession of the applicants consists of following accommodation:-

a: In the first floor of the house no. 248 only one room exists in the front towards bazaar measuring 10.6 Ft. and towards back it is 10.8 Ft in width and 12.3 Ft. in length and just behind it, there is a box room measuring 5.8 Ft. in length and 10.8 Ft. in width and along with the box room, there is attached Latrine and Bath Room measuring 6.8 Ft. x 3 Ft. and just adjacent to it there are stair case to upper storey of the building. It is pertinent to mention here that the doors of the bath room and way to stairs open from the northern wall of the box room and one door is also exists between the front room and the box room.

b:In the second floor of the building, the front room is of the dimension 10.8 Ft in width towards front and 10.10

Ft. towards back and 12.10 Ft. in length and just adjacent to it towards back, there is a box room of the measurement of 10.10 Ft in width and 5.7 Ft. in length with attached latrine and bath room and stair case as in the first floor.

c: In third floor, the front room is of the dimension of 10.2 Ft. in width towards front and 10.8 Ft. towards back of this room and 13.8 Ft. in length towards west and 13.8 Ft. towards east as in the same room, very small room is meant for Yoga for the deponent and the box room attached with this room having dimension of 10.8 Ft. X 5.6 Ft. along with attached latrine and bath room and stair case with the same position as in the first and second floor.

d: That there is a Loft of the building and can not be said to be as Hall as the dimension of this Loft is 13 Ft. in length and 9.5 Ft. in width along with the Pooja Room just above the latrine and bath room of the lower storey. It is not out of place to mention here that in sub-clause 5 of para 4 of W.S. that this room having dimension of 10 X 17 Ft. having the Balcony having the measurement 10 Ft. x 8 Ft is wrong. The reality is that the Balcony in front of the Loft is of the dimension of 7 X 9.5 Ft. consisting no latrine and bath room in the Loft.

To make the position clear, the deponent is annexing the rough sketch map of the accommodation along with his Affidavit is Annexure –A.

That the applicant no.2 is co-owner and landlord of the house no. 248 is the son of the deponent is a practicing lawyer and practicing in the District Court, Nainital and also in the Hon’ble High Court of Uttaranchal at Nainital under the junior ship of Shri Rakesh Thapliyal, Advocate, Additional Standing Counsel of Government of India for which effect a certificate has also been issued on dated 1.5.2001 by Sri Rakesh Thapliyal, Advocate a Photostat copy of the same is being annexed along with this

affidavit as Annexure-B. The length of the practice of Sri Chandra Mauli Shah, applicant no.2 is about 9 years."

The Chandra Muali Shah has also filed his own affidavit, who has stated that the premises is required for establishing the chamber. Paragraph 10 of the affidavit is quoted below:-

" That the applicant no. 1 is being related with education, he also fond of spiritual activities and due to this he has good public dealings and social status in Nainital. In the same manner, the deponent having 9 years of practice, has a large social standing contacts, but due to lack of accommodation, the applicant no. 1 and the deponent are facing great difficulties in fulfilling their social as well as professional liabilities and responsibilities. It is pertinent to mention here that the deponent is a married man having one son, but due to non availability of separate office/chamber, his earnings are being adversely affected."

The prescribed authority by his order dated 23rd Dec. 2003 has released the accommodation. The prescribed authority has held as under:-

"विपक्षी सं02 चन्द्र मोली साह अधिवक्ता हैं जो जिला न्यायालय एवं माननीय उच्च न्यायालय उत्तरांचल में अपना वकालत का कार्य करते हैं और जिनकी वकालत लगभग 11 वर्ष की हो गयी है और जिनके चैम्बर के लिये कोई भी ृपथक कमरा नहीं है निसन्देह किसी स्टोर में कोई चैम्बर नहीं बनाया जा सकता है और न ही उसमें पुस्तको का रख रखाव एवं अपने व वादकारियों को बैठने की व्यवस्था हो सकती है। जबकि प्रार्थीगण के पास केवल एक ड्राइंग रूम व दो बैड रूम हैं और जो कि पक्षकार निरविरोध स्वीकार करते है और एक बैड रूम में प्रार्थी सं01 व उसकी पत्नी निवास करते हुैं तथा दूसरे बैड रूम में प्रार्थी नं.2 व उसकी पत्नी व बच्ची रहती है। प्रार्थीगण का संयुक्त परिवार है और एक साथ ही भोजन आदि भी बनता है, जब कि प्रार्थी सं03 के लिए कोई भी ृपथक बैड रूम नहीं है निसन्देह प्रार्थी न03 ड्राइंग रूम में सोता है यह भी तथ्य निरविरोध रूप से स्वीकार है। प्रार्थी सं.3 दिल्ली में सर्विस करता है जो कभी कभी नैनीताल

आता है। चूंकि प्रार्थी नॅ.2 के पास अपने वादकारियों को डील करने के लिए कोई ृपथक स्थान विवादित दुकान के अलावा नहीं है ऐसी स्थिति में निसन्देह ड्राइग रूम में प्रार्थी सं.2 के व्दारा जिन कानूनी पुस्तको एवं पत्रावलियों का रख रखाव करने व वादकारियों को डील करना सम्भव नहीं है और चूॅकि ड्राइंग रूम में रोज मर्रा की भांति नाते रिश्तेदार आस पास के परिचितों का आना जाना बना रहता है भी स्वाभाविक है। ऐसी स्थिति में एक अधिवक्ता के लिए एक ृपथक चैम्बर की आवश्यकता नितान्त आवश्यक है और विवादित दुकान के अतिरिक्त प्रार्थीगण के पास अन्य कोई कमरा व दुकान प्रार्थी सं02 के चेम्बर हेतु उपलब्ध नहीं है और विपक्षी व्दारा भी भवन सं. 248 को एकोडमेंशन के अतिरिक्त अन्य किसीस्थान पर प्रार्थीगण के पास कोई स्थान होना नहीं बताया गया है जब कि विपक्षी के पास विवादित दुकान के अतिरिक्त दुकान न0 339 जय लाल साह बाजार मल्लीताल नैनीताल व एक अन्य दुकान एम्पायर होटल तल्लीताल में भी नैनी टाइपराइटर के नाम से है। विपक्षी का यह कथन दुकान सं. 229 उसके भाई मोहन सिंह व्दारा चलाई जा रही है पत्रावली पर उपलब्ध फोटो प्रति नकल प्रार्थना पत्र आबटनं 24–ग/1 व 24–ग/2, 25–ग/1 व 25–ग/2 व शपथ पत्र 26–ग/1 से विश्वसनीय नहीं है तथा 27–ग/1 नकल निर्णय जिला पूर्ति अधिकारी /प्रा0अ0 (रें0 कें0) नैनीताल श्री बीरसिंह बनाम श्रीमती हरिप्रिया पन्त से भी स्पष्ट है कि दुकान सं0 229 जय लाल साह बाजार विपक्षी बीरसिंह, मोहन सिंह व हरीश सिंह के नाम टाइप राईटर प्रशिक्षण हेतु आबटित हुई थी तथा अन्य दुकान एम्पायर होटल विपक्षी के पास है ऐसी स्थिति में विवादित दुकान को प्रार्थीगण के हक में रिलीज करने में कोई कठिनाई विपक्षी को नहीं होनी चाहिए और न ही विपक्षी का कारोबार प्रभावित होना है और न ही ग्राहकों में विपक्षी की छबि खराब होती है क्योंकि विपक्षी के पास विवादित दुकान के अतिरिक्त अन्य दो दुकानात नैनी टाइप राइटर संस्थान नैनीताल के नाम से स्थित हैं जब कि प्रार्थीगण के पास प्रार्थी सं02 के चैम्बर के लिए उसके वकालत कार्य में उसके सामाजिक स्तर को देखते हुए विवादित दुकान को बतौर चेम्बर की नितान्त आवश्यकता हजै तदनुसार पक्षकारों के कठिनाइयों को दृष्टिगत

रखते हुये विवादित दुकान को खाली न करवाने की दशा में, विपक्षी की तुलना में प्रार्थीगण को अत्यधिक कठिनाई उत्पन्न होना सम्भव है। जबकि प्रार्थी सं0 2 के लिए विवादित दुकान की तीब्र व सदभावी आवश्यकता है।"

The appellate authority has considered the requirement of the landlord after considering the inspection report. The appellate court has observed as under under:-

"इसलिए भूतल में जो दुकान अपीलार्थी के कब्जे में है, उसकी आवश्यकता प्रार्थी सं02 को चैम्बर के लिये है। किरायेदार भवन स्वामी को यह निर्देशित नहीं कर सकता है कि वह किस कमरे में अपना चैम्बर बनाये और भवन स्वामी ही यह सुनिश्चित कर सकता है कि उसे चैम्बर के लिए किस कमरे की आवश्यकता है जैसा कि 1996 एस0सी0सी0 पेज 344 मीनाल एकनाथ कशिरसागर बनाम ट्रेडस एण्ड एजेंसीज व अन्य में माननीय उच्चतम न्यायालय ने मान्यता दी है कि भवन स्वामी अपने आवास की आवश्यकता के लिए स्वंय न्यायाधीश है। यही मान्यता 1996 सुप्रीम कोर्ट केसेज पेज 353 प्रतिभा देबी बनाम टी0बगी0 कृष्णन में दी गयी है। जे0सी0 अल0आर0 2002 पेज 532 श्रीमती लली देबी बनाम द्वादस अपर जिला जज आगरा व अन्य में इलाहाबाद उच्च न्यायालय ने मान्यता दी है कि यदि मकान मालिक को मकान की आवश्यकता अपने व्यवसाय के लिए है और उसके पास अन्य कोई भवन नहीं है तब वह आवश्यकता भवन स्वामी के पक्ष में मानी जायेगी। यदि किरायेदार का यह कथन है कि उसके पास कोई भवन नहीं है तब भी प्रार्थना पत्र अस्वीकान करने का कोई आधार नहीं होगा। 1996 (6) सुप्रीम कोर्ट पेज 222 शिव स्वरूप गुप्ता बनाम डा0 महेश चन्द्र गुप्ता में माननीय उच्चतम न्यायालय ने मान्यता दी है कि भवन स्वामी को यह सिद्व करना आवश्यकत है कि उसकी आवश्यकता सदभावी है और केवल उसकी इच्छा के आधार पर ही प्रार्थना पत्र स्वीकार नहीं किया जा सकता। सुप्रीम कोर्ट केसेज 2000 (1) प्रज 679 राघवेन्द्र कुमार बनाम फर्म प्रेम मशीनरी व अन्य में माननीय उच्चतम न्यायालय ने मान्यता दी है कि भवन स्वामी ही यह निर्णीत कर सकता है कि कौन से भवन की उसको आवश्यकता हैं। 2002 सुप्रीम कोर्ट एपेक्स कोर्ट जजमेंट पेज 204 आर0सी0

टमारकर बनाम निधि लेखा में भी उच्चतम न्यायालय ने मान्यता दी है कि भवन स्वामी को निर्णीत करनाहै कि वह किस प्रकार अपने भवन का प्रयोग करें। अतः उपरोक्त निर्णयों के आधार पर प्रार्थी सं0 2 ने जो अपने वकालत के व्यवसाय हेतु चेम्बर की आवश्यकता बताई है वह आवश्यकता सदभावी,इमानदारीपूर्वक एवं वास्तविक है। उसको केवल एक इच्छा के रूप में नही माना जा सकता जैसाकि अपीलार्थी के विद्वान अधिवक्ता का तर्क था।"

Requirement of the Advocate:

In the matter of *Gurucharan Singh and another vs. N.P.Agarwal and others 2001(1) Allahabad Rent Cases page 607 it has been held as under:-*

" The tenanted accommodation as described above, comprises of two shops and two adjoining rooms. The need of the landlords to occupy the said accommodation cannot be said to be fanciful or imaginary. It is bona fide and honest, insofar as it relates to the settlment of Anurag Agarwal in share business and Smt. Rajni Agarwal, wife of Sandeep Agarwal in establishing a chamber for legal profession. Capital was sought to be made on the point that husband of Smt. Rajni Agarwal is posted as Lucknow and there appears to be no reason why Smt. Rajni Agarwal should stay away from her husband. It was also abliquely suggested that she is not in active practice as an Advocate at Kanpur. There is enough material on record to suggest that she is staying at Kanpur with her in-laws and brother-in-law as her husband is posted at Lucknow on a transferable post. The children of Smt. Rajni Agarwal are admitted in Kanpur. Lucknow is a place not far away from Knpur and Sandeep Agarwal is in a position to visit Kanpur off and on after office hours or on holidays. Now he has come back on transfer to Kanpur to live with his parents and wife. The President Bar Association of Kanpur has issued a certificate that Smt. Rajni Agarwal is enrolled as an Advocate and is, in fact, engaged in legal practice. The

details of the cases in which Smt. Rajni Agarwal has put in her appearance before the various courts in Kanpur as an Advocate have been given. There is substantial material of record to prove the fact that Smt. Rajni Aga4wal in active practice. A practicing Advocate undoubtedly is required to have a separate, office which may have enough space to house a library, record room to accommodate his juniors and clerks besides place consultation with clients and waiting room for the clients. At least, two rooms accommodation is the minimum requirement for the purpose."

Further the need of the Advocate has been emphasized in the matter of *Prem Nath Bhatia v. Munshi Lal Nigam and others; Allahabad Rent Cases, 1984 (2) page 548* as below:-

"For an advocate worth the name I think that at least three rooms are needed and in the present case the status of the family is also good in the society, hence bare necessities of the family cannot be adjusted in the accommodation in question in the light of ruling reported in 1982 (U.P.) RCC 378: 1982(2)A RC 45, Kuldip Rai Suri and another v. Dr. S.S. Khanna and another, as well as the ruling reported in 1982 (U.P.) RCC 402: 1982 (2) ARC 86, Lakshmi Narain v. Iind Addl. District Judge, Aligarh and others, with Kailash Nandan Prasad v. Addl. District Judge, Moradabad and others have indicated that "even if a landlord is serving outside or living ith his near relations, but makes casual visits to his house, and thus retains control over the entire or portion of the property, he would in law be deemed to be in occupation of the same." In this view of the matter I do not find any force in the contention of the learned counsel for the petitioner that that the need of the two persons belonging to the family of landlord where wrongly taken by the court below while considering the bonafide need and comparing hardships between the landlord and the tenant."

Further in *Kuldeep Rai Suri and another v.Dr. D.S. Khanna; Allahabad Rent Cases, 1982 page 45* it has been held as under:-

> *"Counsel for the petitioner then urged that the release application should have been allowed only in part as required by Rule 16(1) (d) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. This point, admittedly, was not raised either before the Prescribed Authority or before the Additional District Judge. However, in view of the plain language of Rule 16(1)(d) I have permitted the petitioners to raise this plea before this court even under Article 226 of the Constitution. But having gone through the material placed on the record, I am of the opinion that on the facts of the instant case it is not possible to hold that the need of the respondent No.1 will be met by releasing a portion of the accommodation only. A copy of the application made by respondent No.1 for release of the accommodation has been filed as Annexure-1 to the writ petition. Its perusal indicates that the house in question contains four rooms, one box-room, two verandahs, courtyard, bath-rooms, one latrine, kitchen, store and motor garage on the ground floor and one room on mezzanine floor. It further indicates that respondent No.1 who was a government servant and was to retire on 4th July 1979, was as Entomologist in Government Horticultural Research Institute, Saharanpur and had been allotted an official bungalow situated in Company Garden containing four big rooms, one store-room, two verandahs, courtyard, latrine and bath and huge kitchen garden. Paragraph 6 of the application indicates that in the family of the petitioner there were five members e.g. the petitioner himself, his wife and three sons whose ages were shown when the application for release was made in 1977 as 20 years, 17 years and 12 years. Now in 1982 these sons would be aged 25 years, 22 years and 17*

years respectively. It has also been stated in the release application that respondent No.1 has three married daughters who come and stay with him occasionally. Keeping in mind the members in the family of respondent No.1 and his status at the time of retirement which took place pending disposal of the release application on 4th July, 1970 and the extent of the accommodation which was made available to him by the Government at the time of his retirement. I am of the opinion, that his need could apparently not be satisfied by releasing a portion of the accommodation in question only."

The prescribed authority, after considering the bonafide need and comparative hardship dismissed the appeal and has confirmed the findings of the Prescribed Authority. Both the courts below have recorded the findings of bonafide need and comparative hardship in favour of the landlord.

Relevant Case law on bonafide need:

In G.C. Kapoor Vs. Nand Kumar Bhasin and others reported in 2001 Supreme Court and Full Bench Rent Cases 541, the apex Court held as under:

" Clause (a) of sub-section (1) of Section 21 of the Act inter alia provides that the Prescribed Authority may, on an application of the landlord; order eviction of a tenant from the building under tenancy on the grounds mentioned in the said sub-section. Clause (a) is relevant for our purpose which inter alia provides that an application for eviction can be filed by the landlord if the building is bona fide required by the landlord for occupation by himself or by any member of the family or by any person for whose benefit the premises is held by him, either for residential purposes or for purposes of any profession, trade or calling. Section 41 of the Act empowers the State Government to make rules to carry out the purposes of the Act. Exercising powers under the said provisions, Government have framed a set of rules viz. The Uttar Pradesh Urban Buildings (Regulation of

Letting, Rent and Eviction) Rules 1972. Rule 16 is the relevant rule for release of a premises on the ground of personal requirement. Sub Rule (2) lays down that while considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of building let out for the purposes of any business, the prescribed Authority shall also have due regard to the facts stated in the clauses in the sub-rule. We are concerned with clause (d) which runs as follows:-

"(d) where a son or unmarried or widowed or divorced or judicially separated daughter of a male lineal descendant of the landlord has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration."

9. It is settled position of law that bona fide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattarya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and another, 1999 (4) SCC 1: 1999 SCFBRC 292, this Court while considering the bona fide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bona fide'. It was also held that while deciding this question, Court would look into the board aspects and if the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt.

In view of the above, since the landlord requires the premises for establishing his chamber as an Advocate, I am of the opinion that the courts below have rightly concluded in favour of the landlord.

In the case of Gaya Prasad Vs. Pradeep Srivastava reported in 2001 SCFBRC 128 the Apex Court observed as under:

“ 2. This case present a sample scenario of the tormenting plight of an average litigant, who approaches the Court with all expectations of getting relief for his urgent need. But the snail paced litigation creeping through all the tiers of the judicial hierarchical forums would have frustrated all his expectations, though others could admire the tenacity with which her persisted with the cause. Twenty-three years ago, the litigant in this case wanted accommodation for his son, who then became a medical graduate, to start a clinic so that from the stage of a fledging in the profession of medicine he could fly higher up. His father who owns the building moved for eviction of the tenant from the building for the said purpose. Although he won the battle at all tiers the urgently needed eviction is till now eluding him as a mirage.
…….

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long hears from the start to the ultimate termini, is a malady afflicting the system. During this long interval many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.
……

18. We wish to add, as an epilogue, that this case can provide a catalytic agent for the High Court to evolve some concrete scheme for winching to the fore similar long pending matters, lying in torpidity at the bottom of the crammed list of pending cases in the High Courts after passing the initial orders, keeping the operative part of the decree of abeyance. It is worth considering whether a cell can be set up in each of such High Court where the piles of backlog are a stirring problem, to pick

out such cases to be brought to the notice of the Chief Justice of the High Court concerned so that he could take appropriate steps in the matter."

Following the decision of Bega Begum, in the case of N.S.Dutta Vs. VIIth Additional District Judge, Allahabad, 1984 ARC (1) page 113, it has been held as below:

" The expression " bona fide required" appearing in the context of Section 21 (1) (a) has received judicial interpretation in various pronouncements. The assessment has to be objective depending upon the facts and circumstances of the case. The word "required" it was pointed out in Mattu Lal Vs. Radhey Lal A.I.R. 1974 SC 1596, signifies that mere desire on the part of the landlord is not enough, but there should be an element of need and the landlord must show that he genuinely required non-residential accommodation for purposes of starting or continuing his own business(See also Ajit Prasad Vs. IVth Addl. District Judge, Meerut, 1979 ARC 73). The need of the landlord does not, however, have to be shown as absolute. In Smt. Gindori Devi Vs. IInd Addl. District Judge & others, 1979 (UP) RCC 599, at page 601, it was held:-

" It would suffice to mention that a person is said to need a premises bona fide if he requires it honestly. Similarly, the word "required" has also been interpreted in several cases, and the connotation of the said word shows that the landlord must need the premises. In order to succeed in such an application, it is not necessary that the landlord must be on the streets. The connotation of the word "need" or "requirement" should not be unnecessarily or artificially extended so as to give it a meaning that a landlord cannot get a premises released unless his requirement is absolute. No doubt, the question of need of a landlord is to be decided objectively and its decision should not be based on the ipse dixit of

the landlord, but that does not mean that he must stand on extreme need before he could succeed."

In Jayant Kumar Vs. Prescribed Anthority and others, 1979 (UP) RCC 132 it was reiterated that:-

‘ It is , however, not necessary that the landlord must stand in absolute need of the property. The requirement of law is that the need of a landlord must be honest and in good faith. It is not correct that a landlord cannot succeed unless he is found in an extreme need."

In Tej Kumar Vs. Additional District and Sessions Judge. Hardwar and others – 1994 ARC 117, following the aforesaid decision, it has been held as under:

" The inaction of the tenant to search for an alternative accommodation as already indicated hereinbefore, constitutes an additional factor which may outweight the hardship, if any, likely to be suffered by the tenant in the event of the grant of the release application in case where the bona fide requirement for the release stands conclusively established."

Similarly in the case of Smt. Ramkubai since deceased by L.Rs. and others Vs. Hajarimal Dhokalchand Chandak and others reported in AIR 1999 SC 3089 the Apex Court has held that the son who was unemployed at the time of filing of the suit and subsequently started the work of construction contractor, can not be expected to remain unemployed till suit is finally decided. His taking up contractor’s business in the meanwhile, does not militate against his intention to start family business.

In the case of Dwarkaprasad vs. Niranjan reported in 2003 SCFBRC 351 the Apex Court has held as under:-

" A latest decision of this Court in Joginder Pal vs. Naval Kishore Behal reported in 2002 (5) SCC 397: 2002 SCFBRC 388, to which one of us (R.C. Lahoti, J.) was a party takes the same view. In fact, this judgment contains a detailed resume of the entire case law on this

point and holds that the expression for "his own use" occurring in Section 13(3) (a) (ii) (a) of the East Punjab Urban Rent Restriction Act, 1949 has to be liberally construed and should be given a wide and useful meaning rather than a strict and narrow construction. The requirement of a member of family of the landlord who is dependent on the landlord for purposes of residence or for economic consideration can be considered as a requirement of the landlord."

Comparative Hardship:

Rule 16 of Act No. XIII of 1972 has been interpreted in the case of Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (I) A.R.C. 301. After relying upon the judgment of Rajendra Kumar Gupta Vs. Gopal Krishan and others, A.I.R. 1995 Allahabad 82, it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:

" A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Krishan and others, AIR 1995 Alld. 82 : 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein in that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out

alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congency to his moving the present application."

In the case of Arvind Kumar Vs. IInd A.D.J., Etawah reported in Allahabad Rent Cases, 1997 (1) page 304, the it has been held as under:

" It admits of no doubt that according to clause (a), sub-rule (2) of Rule 16, greater the period since when the tenant has been carrying on his venture in the building, less the justification for allowing the application but at the same time, having regard to over-all facts and circumstances of the case, I am persuaded to the view that the findings recorded by the Authorities under the Act in relation to bonafide requirements of the landlord cannot be assailed and whittled down merely because the petitioner had been carrying on his business in the shop in question since the year 1977. It is explicitly postulated in clause (b), sub-rule (2) of Rule 16 that where the tenant has available with hm suitable accommodation to which he can shift his business without the peril of substial loss thre shall be greater justification for allowing the application. The expression "available with him" in this sub-rule does not necessarily mean actual physical availability. A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and

circumstances of the case, it has been held that the petitioenr was wanting in earnest efforts in looking for suitable alternatifge accommodatio, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Krishan and others, AIR 1995 Alld. 82: 1994 (2) ARC 11, it has been held by Sudhir Narian J. and I concur with the view taken therein……."

The appellate court has recorded a finding that the tenant has alternative shop. The finding to that effect is quoted below:-

"जहॉ तक तुलनात्मक कठिनाई का प्रश्न है, भवन स्वामी के अनुसार अपीलार्थी के पास दुकान सं0 229 जयलाल साह बाजार मल्लीताल में है जहां पर उसका भाई टाइप इन्स्टीटयूट और एम्पायर होटल तल्लीताल नैनीताल जहां पर उसकी बहिन कु0 गंगा बिष्ट अपना टाईप इन्स्टीटयूट चला रही है अतः अपीलार्थी वहां पर अपना व्यवसाय कर सकता है। जब कि अपीलार्थी का कथन है कि वह दुकानें अलग अलग हैं और उनका बटवारा हो चुका है। लेकिन रिकार्ड पर जो दस्तावेज उपलब्ध हैं तथा जिसे कागज सं0 24–ग के रूप में भवन स्वामी ने दाखिल किया है उससे स्पष्ट होता है कि जो एलाटमेंट का प्रार्थना पत्र नैनी टाईप इन्स्टीटयूट तल्लीताल के लिए दिया गया था वह मोहन सिंह बिष्ट, बीरसिंह बिष्ट व हरीश सिंह बिष्ट तीनों ने दिया था और दुकान भी तीनों को आबटित हुयी थी। अतः अब अपीलार्थी यह नहीं कह सकता है कि उक्त दुकान उसके अन्य भाईयों व बहिन को आबटित हुयी थी। कागज सं0 27–ग पर वाद सं0 71/82 का जो निर्णय दाखिलं किया गया है उससे भी स्पष्ट होता है कि उक्त दुकान बीरसिंह बिष्ट व उनके भाईयों हरीश सिंह बिष्ट व मोहन सिंह बिष्ट को आबटित की गयी है। यह भवन टाईपराईटर इन्स्टीटयू ट के लिए आबटित किया गया है और अपीलार्थी अपना व्यवसाय अपने भाईयों के साथ वहां पर चला सकता है। यदि प्रार्थना पत्र अस्वीकार किया जाता है तो प्रार्थी सं0 2 चन्द्र मोली साह को अपना व्यवसाय करने में काफी परेशानी होगी क्योंकि वह आठ साल से अपना विधि व्यवसाय कर रहा है। इसके विपरीत अपीलार्थी को कोई परेशानी नहीं होगी।"

Apart from the aforesaid evidence it is averred that that the tenant has not made the efforts to search the accommodation. Efforts should have been made by him in this regard. The appellate authority has also awarded compensation for two years. Further reasonable time to vacate the premises

by the petitioner also will mitigate the hardship if any to the petitioner.

The above view has also taken in the case of Bharat Kumar Gupta Vs. VIIth Addl. District and Sessions Judge, Aligarh, reported in A.R.C. 1997(2) page 259.

Both the courts below have concluded the Comparative hardship in favour of the landlord. I find no illegality in the order so as to interfere under Article 226/227 of the Constitution of India.

Relying upon the judgment of Apex Court *Bega Begam Vs. Abdul Ahmad Khan reported in AIR 1979 SC 272,* it has been observed in Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77, that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

" As observed by this Court in its decision in the case of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and othrs reported in 1984 (1) A.R.C. 387, the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word"……..

In the case of Bega Begum and Abdul Ahmad Khan, reported in AIR 1979 SC 272:1986 SCFBRC 346, the Apex Court had observed that while it was no doubt true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by itself could not be a valid ground for refusing a decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into account. In the present case while the landlord had led sufficient evidence to show that no other

alternative accommodation was available, the tenant had not let any such evidence which could show that he had ever attempted to search for an alternative accommodation or ever attempted to seek allotment of any accommodation which could be utilized for shifting his business which was dwindling day by day and as observed by the Appellate Authority itself, had been closing during the pendency of appeal.

In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4th proviso to section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embraces the field which is covered by the main provision and the main part cannot be construed in such a manner so as to render a proviso redundant yet under the scheme of the Act, the 4th proviso to section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basic intent expressed in the substantive provision which, as is apparent from the perusal of section 21 of the Act is to enquire the availability of the demised premises to the landlord on his successfully establishing the bona fide requirement of the same for the purpose envisaged in that section.

The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of

the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be tilted in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for outweight the prejudice or the inconvenience which may likely be caused to the tenants."

It has been held in Rameshwar Sahi Mathur Vs. District Judge, Dehradun reported in 2004 (1) Allahabad Rent Cases page 177 as under:

"Further the tenant cannot dictate the landlord as to how he should use the accommodation as held in the case of Sardar Pritam Singh through LRs Vs. Sardar Prakash Singh and others in 1999 (2) A.R.C P-338. The observations are quoted below:-

Paragraph 18- "Learned counsel for the petitioner then referred to the decision reported in, 1996 (1) AWC 409. View taken in the decision reported in, 1990 AWC 1508, has been reaffirmed and it is observed that tenant cannot dictate landlord as to how he should live and the need of the landlord must be commensurate with his status

keeping in mind his need both qualitatively and quantitatively."

Paragraph 21- " No prudent man under normal circumstances could take a view, as has been done by the Courts below. Courts below ought to have taken into account the fact that family is to grow and within short span of time family members were bound to increase in all probabilities. Again children were to grow requiring additional accommodation."

Interference under Article 226/227 of Constitution of India:

The jurisdiction under article 226/227 of the Constitution of India is limited and High Court cannot act like a Court of appeal so as to interfere with the findings of the Prescribed Authority on the question of *bona fide* hardship.

Relying upon the earlier judgment in the case of Surya Dev Rai Vs. Ram Chander, SCC 2003 Vol. 6 page 675, the Apex Court has held in the case of Ranjit Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases 682 as below:

"In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation

of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that- " considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

Appellate Court has already allowed the landlord to pay the tenant the compensation for a period of two years. The same shall be paid to the tenant at the time of filing undertaking before the Prescribed Authority. The same time to the petitioner for vacating the premises will further be sufficient.

Consequently the writ petition is dismissed. No order as to costs.

However, time is granted to the petitioner to vacate the premises by 28th February, 2005 provided an undertaking is given in the following terms :-

(i) to vacate the premises by 28th February, 2005

(ii) to pay entire damages for use and occupation upto 28th February, 2005

(iii) the undertaking shall be furnished by 31st October, 2004

(iv) monthly damages shall be paid by 1st week of every month

(v) in case of default the decree for eviction shall be executed forthwith.

(Rajesh Tandon, J.)

ISB